

FILED
Court of Appeals
Division III
State of Washington
5/5/2020 9:03 AM

No. 36864-5-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

WILLIAM NICOL,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 16-1-01233-1

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

Terry J. Bloor, Deputy
Prosecuting Attorney
BAR NO. 9044
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. RESPONSE TO ASSIGNMENTS OF ERROR.....1

II. STATEMENT OF FACTS1

III. ARGUMENT2

 A. There is sufficient evidence to convict the defendant
 of Bail Jumping.....2

 1. Standard on review2

 2. The evidence meets this standard2

IV. CONCLUSION.....4

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Alexander, 125 Wn.2d 717, 888 P.2d 1169 (1995).....3
State v. Homan, 181 Wn.2d 102, 330 P.3d 182 (2014)2

WASHINGTON STATUTES

RCW 9A.76.170 (3) (c)2

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State disagrees with the assignment of error that there was insufficient evidence to prove the defendant was guilty of Bail Jumping.

II. STATEMENT OF FACTS

The defendant was charged in Benton County Cause Number 15-1-01275-8 with two counts of First Degree Child Rape and one count of First Degree Child Molestation, all with an alleged aggravating factor of abuse of position of trust. RP at 15. He posted bail. RP at 13. His trial on these charges started on October 17, 2016 and went until October 21, 2016. RP at 16. He was present on the first day and appeared after recesses. RP at 17-18. He was present on each day thereafter and reappeared after all recesses. RP at 19-23.

On Friday, October 21, 2016, closing arguments began in the morning and the defendant was present. RP at 24. The court recessed at 11:49 A.M. RP at 25. The jury had a question for the trial judge at 4:11 P.M. *Id.* The defendant was also present for that question. RP at 25-26.

The jury then reached a verdict at 4:43 P.M. RP at 26. However, the defendant was not present, and his attorney could not reach him. Ex. 3; RP at 46, 48. About one year later, on October 4, 2017, the defendant

turned himself into authorities in Imperial County, CA. RP at 65. The trial court found his absence voluntary. CP 4.

He was charged with Bail Jumping and the defendant waived his right to a jury trial. The Court found the defendant guilty.

III. ARGUMENT

A. There is sufficient evidence to convict the defendant of Bail Jumping.

1. Standard on review:

To determine whether the evidence was sufficient to convict, an appellate court reviews the evidence in the light most favorable to the State to determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014).

2. The evidence meets this standard.

The elements of Bail Jumping, RCW 9A.76.170 (3) (c) are:

- 1) The defendant having been released by court order or admitted to bail;
- 2) The defendant is charged with a Class B or C felony;
- 3) The defendant has knowledge of the requirement of a subsequent personal appearance before any court of the state;
- 4) The defendant fails to appear.

There is an affirmative defense for the charge provided in RCW 9A.76.170 (2) if there are uncontrollable circumstances preventing the defendant from appearing in court. The defendant did not claim the affirmative defense was applicable. So, the only issue is whether the defendant knew of the requirement to appear for the jury's verdict.

The trial court's Findings of Fact and Conclusions of Law are helpful. Those Findings are not challenged on appeal and therefore become verities. *State v. Alexander*, 125 Wn.2d 717, 723, 888 P.2d 1169 (1995). The Finding of Fact 10, that the trial court in the original case, No. 15-1-01275-8, found the defendant voluntarily absented himself, is a verity. Finding of Fact 4, that the defendant was required not to depart without permission from the court is a verity.

Court did not recess after the jury's question at 4:11 P.M. on October 21, 2016. The defendant's attorney did not tell him he had permission to leave the courthouse. The most likely scenario is that the defendant heard the jury's question, concluded he would be found guilty of at least one crime, and knowing that he would be taken into custody immediately under RCW 10.64.025 (2), fled.

It is also significant that the defendant fled the state and was arrested near the Mexico border. If he was confused about whether court had concluded on Friday, October 21, 2016, it would have been easy to

find him the next business day at his residence. The lapse of one year between the jury verdict and the arrest is also significant. If the defendant thought he had been excused from further hearings in court, it would not have taken one year to resolve the issue.

IV. CONCLUSION

The conviction should be affirmed.

RESPECTFULLY SUBMITTED on May 5, 2020.

ANDY MILLER
Prosecutor



Terry J. Bloor, Deputy
Prosecuting Attorney
Bar No. 9044
OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Gary Metro
719 Jadwin Avenue
Richland, WA 99352

E-mail service by agreement
was made to the following
parties:
garymetro@outlook.com

Signed at Kennewick, Washington on May 5, 2020.


Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

May 05, 2020 - 9:03 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36864-5
Appellate Court Case Title: State of Washington v. William George Nicol
Superior Court Case Number: 16-1-01233-1

The following documents have been uploaded:

- 368645_Briefs_20200505090222D3490494_8707.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 368645 Nicol - Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- andy.miller@co.benton.wa.us
- garymetro@outlook.com
- garymetrolawfirm@gmail.com

Comments:

Sender Name: Demetra Murphy - Email: deme.murphy@co.benton.wa.us

Filing on Behalf of: Terry Jay Bloor - Email: terry.bloor@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

Address:
7122 W. Okanogan Place
Kennewick, WA, 99336
Phone: (509) 735-3591

Note: The Filing Id is 20200505090222D3490494